



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **KA/LON/00AW/F77/2019/0017**

Property : **Flat 6, 65 Harrington Gardens,
Kensington, London SW7 4JZ**

Applicant : **Ms. B. Salhi (Tenant)**

Representative : **Mr. J. Fraser MRICS**

Respondent : **Women's Pioneer Housing Limited
(Landlord)**

Representative : **Mr. N. Grant of Counsel**

Type of Application : **S.70 Rent Act 1977 –
Determination of a new fair rent**

Tribunal Members : **Mr. N. Martindale FRICS
Mrs. J. Hawkins**

Date of Inspection : **19 July 2019**

Date of Decision : **19 July 2019**

REASONS FOR DECISION

Background

- 1 By an application dated 24 September 2018 the landlord applied to the Rent Officer for registration of a fair rent of £1000 per calendar month for the Property. The landlord stated that the existing rent was £622.28 per calendar month.
- 2 On 28 November 2018, the Rent Officer registered a fair rent of £435.69 per calendar month with effect from 28 November 2018. This reflected £21.27 for fuel, and included £88.69 attributable to services. The previous registered rent was not shown in this registration. The registered rent was shown as not exempt from Maximum Fair Rent Capping (MFR). The Property was described as a “*Self contained Converted flat. C.1800-1918, full central heating comprising First, 2 rooms, 1 kitchen, 1 Bath/WC Outside.*”

- 3 Although the Tribunal did not have sight of it, the landlord made written objection to this registration some time in December 2018. On 8 January 2019 the Rent Officer informed the parties that matter was referred to Tribunal for a fresh determination of the rent.
- 4 Directions dated 14 January 2019 for the progression of the case were issued for a determination by written representations only on 26 February 2019. Neither side requested a hearing. On subsequent application of the tenant the Tribunal granted a postponement. Directions dated 2 May 2019 for the progression of the case were issued for a determination by written representations only again, on 7 June 2019. Neither side requested a hearing. There was further correspondence from one or more of the parties and the determination date was postponed again, this time to 19 July 2019. Finally there was further correspondence from one or both of the parties which resulted in the matter being listed for hearing on that date.
- 5 Both sides made written representations before the hearing. Both parties were represented. At the hearing Counsel for the landlord requested an adjournment as he himself had only very recently been instructed but particularly to allow his client time to obtain a survey in support of an assessment of the current condition of the Property. The tenant objected on the basis that there had been plenty of time for this to be obtained prior to the current hearing date.
- 6 The Tribunal adjourned briefly to consider the matter; but dismissed the adjournment request, because: The case had already been postponed twice before; the Tribunal already had the benefit of written evidence from Mr J Fraser MRICS; and the parties and the expert witness were already present. Moreover the Tribunal had regard to its 'overriding objective' as set out in Rule 3 of FtT Property Chamber Rules 2013 which require the Tribunal to deal with matters fairly, justly and proportionately, and an adjournment at this late stage was not proportionate.
- 7 Both sides supplied additional supporting documentation at the hearing. Neither side objected to its late production and the Tribunal accepted them. Mr J Fraser provided oral expert evidence and answered questions from Counsel for the landlord and from the Tribunal.
- 8 Counsel for the landlord provided the Tribunal with legal submissions in support of their case and copies of the case reports cited.

Applicants case (Landlord)

- 9 The landlord maintained that the Maximum Fair Rent Cap does not apply to the new fair rent to be determined here. This was because the Property was subject to repairs and improvements sometime in 2015, before the current tenant moved in, and since the previous rent registration.
- 10 The landlord provided colour copies of 6No. photographs said to have been taken at the Property prior to the works in 2015 and equivalents on completion, but prior to the tenant's occupation. These were of the interior of the bathroom, WC, kitchen, and living room only.

- 11 From the photographs of the bathroom before, the Tribunal was shown a separately partitioned WC with a high level plastic cistern feeding a low level pan with a standard white sink at the far end of the room. There was no picture of the bath. The photographs of the bathroom after, showed a concealed cistern arrangement behind a low level WC pan. They also show a replacement sink with mono bloc tap. Behind is a plain white bath and tap fed shower attachment above and tiled walls. Wall finishes appeared similar before and after. A suspended framed ceiling of light weight tiles and inset lights was installed.
- 12 From the photographs of the kitchen before, the Tribunal was shown a range of modern wall and base units topped with a standard formica surfaced worktop, splash back wall tiling, a stainless steel left hand single drainer sink with twin taps and a gap to accommodate most likely a stand alone gas or electric cooker. The photographs of the kitchen after, also show a range of a modern wall and base units topped with a modern formica surfaced worktop, splash back wall tiling, a stainless steel left hand single drainer sink with a mono bloc tap and a gap to accommodate most likely a stand alone gas or electric cooker. Wall finishes appeared similar before and after.
- 13 From the photographs of living room before the Tribunal saw a wooden block floor and two curtained windows fronting timber double hung sash windows. The photographs of the living room after showed a carpeted floor and no curtains. The windows and wall finishes appeared similar or the same before and after.
- 14 There were no photographs of the bedroom or of the central hallway in the flat, before and after.
- 15 The landlord also supplied a copy of an undated, unpriced, extract to what was said to be the specification of works carried out to the Property. Though the address does not appear in it, the tenant did not dispute this as representative of the works to be undertaken. The specification dealt with the Property room by room: Hallway, lounge, kitchen, bathroom, and bedroom.
- 16 The work to the hallway was essentially to remove and replace redundant cabling, new light fittings, new light and power switches, replacement internal doors and door fittings to all rooms. Redecoration of walls ceiling and painted wood, re-securing of loose wood flooring, ply and carpeting over. Work to the lounge was similar to the Hallway plus boxing in of the old fireplace, some wall and ceiling plasterwork repairs and servicing of the existing windows. Work to the kitchen was similar to the Lounge; plus adjustment to electrical power sockets and cooker point, removal and replacement of kitchen wall and base units, new sink, taps, replacement wall tiling and worktop, and a new extractor fan. Work to the bathroom was similar to the Lounge; plus removal of the old WC partitioning, removal and replacement of the WC bath and basin, with mono bloc taps to each and a shower extension fitting to bath taps. Work to the bedroom was similar to the Lounge; plus the installation of two new fitted wardrobes, one housing the gas fired boiler already supplying hot water and heat to the Property the other for general storage.
- 17 The landlord stated that these works in the schedule carried out in early 2015 amounted to significant repairs and/ or improvements which in turn significantly increased the open market rental of the Property. Such would have been the resulting uplift solely attributable to these works, not just the general rise in the market, that the fair rent would have increased by 15% or more as a

result since the last registration. Most importantly of all we were told that the MFR cap would not apply. The opinion regarding the nature of the work nor of its effect on value, was not expert evidence however.

- 18 The landlord supplied details of other fair rents registered on flats in the Building or nearby. They did not provide evidence of open market rents sought or obtained nearby.
- 19 Counsel for the landlord drew the Tribunal's attention to the case of Hill & Helix HA [2017] UKUT 0238 (LC) and of Ljepojevic & University of Cambridge [2017] UKUT 0213 (LC). These UT decisions dealt primarily with the correct application of the MFR cap to fair rent increases and the nature of works of repair and or improvement which gave rise or otherwise to such increases between registrations. The Tribunal was also directed to Woodfall L&T vol 3, pt 9, ch23; 'Fair Rents and the Process of Rent Registration'. In doing so Counsel for the landlord sought to clarify to the Tribunal that full account should be taken to increases in rental value arising from any works to the Property since last registration. Whether these works were of repair or of improvement or of both, made no difference.

Respondents case (Tenant)

- 20 The tenant confirmed that her tenancy of this Property had commenced on 21 August 2015. She had moved there as a result of a housing transfer. She stated that the landlord currently charged her a rent of £614.50 pcm. The tenant confirmed that as a result of this appeal by the landlord she had now discovered that there was already a fair rent of £187 pcm on the Property, so that she had in effect been overcharged by the landlord for several years.
- 21 The tenant observed that the landlord was seeking to increase the rent by reference to other rents and particularly to the works carried out to the flat earlier in 2015. However she stated that a comparison with rents of other properties registered or otherwise is wholly irrelevant because of the MFR cap on a last registered rent of £187 pcm. Even allowing for intervening inflation plus 7.5% as the first increase since February 1999 this would still have a considerable limit the rent increase possible now.
- 22 Turning to the works done in 2015, the tenant regarded these as 'essential repairs to make the Property lettable and not improvement works. Therefore these works were irrelevant to the setting of a new rent. Indeed the tenant also regarded the Property as in a poor state of repair, with visible water damage and mould growth.
- 23 The Tribunal was assisted by expert evidence from Chartered Surveyor Mr J. Fraser, both in his written report on the Property and his oral presentation at the hearing. Mr Fraser had at Report page 4; *"...been instructed to inspect the property and comment upon works carried out by the landlord and to provide my professional opinion on whether these works would constitute improvements. I am also asked to consider whether in my professional opinion I believe the rent is capped by the Maximum Fair Rent legislation in the circumstance."*
- 24 He confirmed that the tenant had been in another flat in different building on a higher floor before she moved into the Property in August 2015. He confirmed

that the applicant had been tenant of this landlord albeit elsewhere, since 1983. He stated that in both of the two applications made to the Tribunal by the landlord to re-register the existing fair rent, they had twice indicated that there had been no improvements. He had concluded that the works were not really improvements but simply repairs needed to enable the flat to be lettable at all.

- 25 Mr Frasers report lists the arrangement and condition of the Property during his recent inspection. *“The works carried out appear to be consistent with like for like replacement of the previous kitchen fittings... of basic quality being of a standard below what would be expected from the private sector lettings market.”* Similarly in the bathroom *“works represent essential works required to ensure the property has suitable fixtures and fittings for occupation.”* He saw water staining to the ceiling. He found that the *“service provision is cosmetically well below the standard expected by the private rental market for a property in this location.”* In the reception room he found that *“no improvements have been carried out, some redecoration has taken place with a new floor covering installed.”* He expressed concern at the absence of sash window locks both for security from intruders and sash limiters the safety of occupants who might fall over the relatively low cills. He concluded... *“I do not believe that the works carried out by the landlord were improvements, it would appear that they were the minimum works required to make the property suitable for letting.”*
- 26 Mr Fraser concluded that the maximum fair rent cap remained undisturbed. He therefore applied the standard MFR calculation, albeit at the date of his report (November 2018) to the existing registered rent of £187 pcm set in November 1991. A starting RPI of 135.60, and an end RPI of 284.1 as at September 2018, plus 7.5% (a first registration after 1991). Applying the uplift of the RPI plus 7.5% between the two months to the existing fair rent net of variable service charges came to £347. Then adding back in the services of £88.69 pcm resulted in a capped fair rent of £435.69 pcm at the date of his report. He accepted that the MFR capping calculation now would result in a slight uplift owing to the small rise in RPI since last year.
- 27 Mr Fraser did not provide any comparable market lettings or refer to the rent registrations of similar properties nearby as he considered these to be irrelevant; the cap applied.

Inspection

- 28 The Tribunal inspected the property on 19 July 2019. They found it very much as shown in the ‘after’ photographs, as intended to be from the works specification, and as set out in Mr Fraser’s report. The building is a traditional construction brick and tile roofed, a multi storey, grand late Victorian terraced house, since converted into many small self contained flats, on the various levels. The Property itself was unusual. It appeared to have been created from one or part of one very large ground floor former entertaining reception room when arranged as perhaps a very large Victorian family dwelling.
- 29 Access to the Property was off a spacious raised ground floor shared entrance hallway. The Property has no outside areas or store to itself. It looks out at the rear on well kept private communal gardens which appear to be shared at least by the terrace known as Harrington Gardens and possibly other dwellings. There is no off street parking. There is a controlled parking scheme for residents. Harrington Gardens in located South Kensington, a high rental value area.

- 30 The Property has an internal hall, living room, bathroom/WC, kitchen, bedroom as described above with gas fired central heating. The flat accommodated a large quantity of the tenant's personal possessions which limited the ability of the Tribunal to inspect.
- 31 Although the Property is in a generally fair state of repair and decoration apart from water leak stains noted to two rooms, the interior is still relatively basic and appears largely unimproved from its initial conversion and subdivision in perhaps the 1960's. In considering this, the Tribunal were mindful of the particular location of the Property and that the requirements for the layout, arrangement, appearance, standard, fittings and finish of residential accommodation in the private sector in this area are high. It found that this Property did not meet them as currently presented.
- 32 There were no landlord's white goods or curtains, but the carpets fitted are those of the landlord.

Law

- 33 When determining a fair rent the Committee, in accordance with the Rent Act 1977, section 70, had regard to all the circumstances including the age, location and state of repair of the property. It also disregarded the effect of (a) any relevant tenant's improvements and (b) the effect of any disrepair or other defect attributable to the tenant or any predecessor in title under the regulated tenancy, on the rental value of the property.
- 34 In *Spath Holme Ltd v Chairman of the Greater Manchester etc. Committee* (1995) 28 HLR 107 and *Curtis v London Rent Assessment Committee* [1999] QB 92 the Court of Appeal emphasized that ordinarily a fair rent is the market rent for the property discounted for 'scarcity' (i.e. that element, if any, of the market rent, that is attributable to there being a significant shortage of similar properties in the wider locality available for letting on similar terms - other than as to rent - to that of the regulated tenancy) and that for the purposes of determining the market rent, assured tenancy (market) rents are usually appropriate comparables. (These rents may have to be adjusted where necessary to reflect any relevant differences between those comparables and the subject property).

Decision

- 35 Where the condition of a property is so much poorer than that of comparable properties, so that the rents of those comparables are towards twice that proposed rent for the subject property, it calls into question whether or not those transactions are truly comparable. Would prospective tenants of modernized properties in good order consider taking a tenancy of an un-modernized house in poor repair and with only basic facilities or are they in entirely separate lettings markets? The problem for the Tribunal is that the only evidence of value levels available to us is of modernized properties. We therefore have to use this but make appropriate discounts for the differences, rather than ignore it and determine a rent entirely based on our own knowledge and experience, whenever we can.
- 36 On the evidence of the comparable market lettings from the parties and our own general knowledge of market rent levels in Kensington, we accept that the subject property if modernized and in good order would let on normal Assured

Shorthold Tenancy (AST) terms, for £1,600 per calendar month. This then, is the appropriate starting point from which to determine the rent of the property as it falls to be valued.

- 37 A normal open market letting even in this location would include curtains and “white goods”, but they are absent here. Although the flat is sizeable its layout creates a series of long narrow rooms limiting the usefulness of the floor area. Whilst the sash windows are characterful there is no double glazing within them. The fittings to kitchen and bathroom and the finishes to all rooms are still only functional and basic. To reflect these factors we make allowances of £400 per calendar month to the starting market rent.
- 38 From a starting market rent of £1,600 per calendar month, we therefore make total deductions of £400 per calendar month, leaving the adjusted market rent at £1,200 per calendar month.
- 39 The Tribunal also has to consider the element of scarcity and whether demand exceeded supply. The Tribunal found that there was a substantial scarcity in the locality of Greater London and therefore makes a further deduction of 20% from the adjusted market rent to reflect this element. This leaves £960. The uncapped fair rent to be registered would therefore be £960 per calendar month.
- 40 However the Tribunal is also required to calculate the Maximum Fair Rent Cap. This is determined by a formula under statutory regulation, which whilst allowing for an element of inflation may serve to prevent excessive increases. The Cap as the date of the Tribunal’s determination is £441.69 per calendar month.
- 41 Counsel for the landlord drew the Tribunal’s attention to the regulation and case law. It is therefore mindful of the absence of any distinction in the nature of the works when it comes to assessing their effect if any on rental value: They could be repairs or improvements, it makes no difference. To this extent we do not agree with Mr Fraser’s evidence that they had to be ‘improvements’ to have any possible effect.
- 42 That stated, the Tribunal determines that the 2015 works did not raise the rental value, but simply served to prevent it declining. As the works alone have not raised the rental value by 15% compared with the value had the works not been carried out, then the Maximum Fair Rent Cap consequently remains in place for the purposes of this determination.
- 43 As this Cap is lower than the uncapped rent, the fair rent determined by the Tribunal for the purposes of S.70, remains at £441.69 per calendar month. This new rent will take effect from and including the date of determination, 19 July 2019.

Name: N. Martindale

Date: 19 July 2019

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).